

E-Filed 5/5/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSEPH E. HUGHES,
Petitioner,

v.

JAMES WALKER, Warden,
Respondents.

No. C 09-6049 RS (PR)

**ORDER STAYING PETITION;
VACATING IN PART PREVIOUS
ORDER**

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. The petition challenges convictions received in 2004 in a San Mateo Superior Court for committing lewd acts on a person under the age of fourteen. The petition contains six claims, five of which petitioner asserts were exhausted in the state courts, and one that petitioner concedes is unexhausted.

In a previous order, the Court dismissed the unexhausted claim, and granted petitioner a stay under *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009) on grounds that a stay under *Rhines v. Webber*, 544 U.S. 269, 277–78 (2005) would be inappropriate as petitioner had not sufficiently explained whether his unexhausted claim was presented on direct appeal to the

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1 state appellate and supreme courts, or, if it was not presented on direct appeal, why it was
2 not. Petitioner has filed a motion for reconsideration (Docket No. 12).

3 Petitioner has now provided sufficient grounds for a stay under *Rhines*, which is
4 hereby GRANTED. Accordingly, petitioner does not have to worry that his newly-exhausted
5 claim will be barred by the statute of limitations because that claim remains pending in
6 federal court. *See King v. Ryan*, 564 F.3d 1133, 1139, 1140. (9th Cir. 2009). The Court's
7 previous order, Docket No. 11, is VACATED to the extent that it granted a stay and
8 dismissed the unexhausted claim of juror vote-bartering. The unexhausted claim now is
9 deemed part of the petition. The denials of petitioner's motions for the appointment of
10 counsel, and the application to proceed *in forma pauperis*, however, remain in force.

11 For the foregoing reasons, and good cause appearing, petitioner's request for a stay is
12 hereby GRANTED, and the above-titled action is hereby STAYED until petitioner exhausts
13 the unexhausted claim and, provided petitioner, within thirty (30) days of exhausting said
14 claim, moves to reopen this action and lift the stay, for such additional period of time and
15 until the Court thereafter orders the stay lifted.

16 The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this
17 action.

18 The order terminates Docket No. 12.

19 **IT IS SO ORDERED.**

20 DATED: May 5, 2010

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22 RICHARD SEEBORG
23 United States District Judge
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